

2850. WITHHOLDING THE FEDERAL SHARE OF PAYMENTS TO MEDICAID PROVIDERS TO RECOVER MEDICARE OVERPAYMENTS; WITHHOLDING MEDICARE PAYMENTS TO RECOVER MEDICAID OVERPAYMENTS

2850.1 **Introduction.**--Providers furnishing health care services under both Medicare and Medicaid are reimbursed according to the rules and regulations applicable to each program. Overpayments can occur in either program, at times resulting in a situation where a provider participating in both programs owes a repayment to one while receiving reimbursement from the other. This is inappropriate since Federal funds support both programs. The Health Care Financing Administration has the authority under the Social Security Act to collect overpayments through the other program. Under section 1914(b) of the Act, the Secretary may recover Medicare overpayments by reducing Federal financial participation (FFP) in payments otherwise due a State under title XIX, and may require the State to reduce its payment to the provider. Under Section 1885 of the Act, withholding of Medicare payments may occur when a provider has, or previously had in effect, an agreement with a Medicaid State agency to furnish Medicaid services and the Medicaid agency has been unable to recover overpayments made to the provider, or collect the information necessary to enable it to determine the amount of any overpayment(s). (See 42 CFR 405.375(c)(1) and (2))

2850.2 **Authority.**--Section 905 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) amended sections 1902(a)(13), 1903(a)(1), 1903(j), and 1903(n), and added a new Section 1914 to the Social Security Act. Section 2104 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) added Section 1885 to the Social Security Act.

2851. PROCEDURES REQUIRED OF THE MEDICAID STATE AGENCY TO IMPLEMENT SECTION 1914

If ordered by HCFA under 42 CFR 447.30(d) of the regulations, reduce payment to the provider by withholding either the amount of the Medicare overpayment or the amount of the Federal share of payments to the provider, whichever is less. In other words, if the Federal share of payments to the provider exceeds the Medicare overpayment, withhold only the overpayment amount. If the Medicare overpayment exceeds the quarterly payment to the provider, withhold only the Federal share amount for that quarter. In succeeding quarters, compare the Federal share amount to the remaining overpayment and continue reductions until the overpayment is recovered.

When the notice of withholding is received from the RO to reduce (withhold) the Federal share of payments to a provider, you have 60 days to change payment procedures to assure that reimbursement to the overpaid provider is limited to the State's share. (See Exhibit 1.) Begin withholding the Federal share of payments 60 days from your receipt of HCFA's notice of withholding and continue withholding until the overpayment has been collected, or the reduction order has been terminated. HCFA terminates the order when:

1. The Medicare overpayment is recovered;
2. The provider makes an agreement satisfactory to HCFA to repay the overpayment; or

3. HCFA determines that there is no overpayment based on newly acquired evidence or subsequent audit. (See Exhibit 2.)

The reduction order automatically expires when you determine that the entire overpayment has been recovered.

If you are under a Federal court injunction which prevents you from reducing (withholding) the Federal share of the Medicaid payment to the affected provider, advise the RO in writing and provide a copy of the injunction. HCFA terminates the reduction order provided the injunction also enjoins HCFA.

Report the amount withheld on line 4 of your Form HCFA-64 for that quarter and attach a separate reporting schedule showing the amount withheld from the provider. (See Exhibit 3.)

Any excess amounts withheld will be restored to the provider by the intermediary/carrier if the amount of the Medicare overpayment is ultimately determined to be less than the amount withheld. The intermediary/carrier issues a check to the provider for the excess amount.

If you do not comply with HCFA's order to reduce (withhold) the Federal share of Medicaid payments to the provider and make full payment to the provider, HCFA will send you a disallowance letter for the FFP amount of the claimed expenditure, and adjust your grant award to effect recoupment. If the amount withheld from you is excessive, the intermediary/carrier issues you a check to restore the excess amount withheld.

Exhibit 4 is an example of how withholding works.

## 2852. PROCEDURES REQUIRED OF THE MEDICAID STATE AGENCY TO IMPLEMENT SECTION 1885

Make every effort to collect the overpayment from the provider before requesting the HCFA RO assistance in recovering a Medicaid overpayment through Medicare. Send the provider, by certified mail return receipt requested, either or both notices specified in 42 CFR 447.31(b)(1)(i) and (ii). Give the provider 30 days written notice by certified mail of your intent to refer the case to HCFA for collection of the overpayment by withholding payments made under the Medicare program. (See Exhibit 5.) If, during the 30-day period the provider satisfies you that the overpayment will be refunded or furnishes evidence to render collection unnecessary, take no further action.

If the provider does not respond, request the RO to initiate withholding of Medicare payments to the provider. (See Exhibit 6.) Furnish the RO with the information or documentation specified in the regulations at 42 CFR 447.31(c).

If the RO determines that you have not previously made a decreasing adjustment for the Federal share of the overpayment on your Form HCFA-64, your request for HCFA's assistance in recovering the Medicaid overpayment through Medicare will be denied.

When the collection is made, the intermediary/carrier sends a payment check to the RO for the amount of the overpayment recovery. The RO advises you that the collection has been made and forwards the check. (See Exhibit 7.)

The cycle is repeated until the Medicaid overpayment is recovered.

If, as the result of an appeal, submission of new information by the provider, or discovery of an error, HCFA determines that the funds withheld from the provider were in excess of the Medicaid overpayment, restore the excess funds to the provider. Issue a check to the provider for the excess amount.

To terminate withholding notify HCFA when (1) the Medicaid overpayment is recovered; (2) the provider makes a satisfactory agreement to repay the overpayment; or (3) you determine that there is no overpayment, based on newly acquired evidence or subsequent audit. (See Exhibit 8.)

Exhibit 9 is an example of how withholding works.

### List of Exhibits

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Notice of Withholding

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(Medicaid State agency)

Dear \_\_\_\_\_:

Re: (Overpayment ID No.)

Section 1914 of the Social Security Act provides the Health Care Financing Administration (HCFA) with broad authority to recover Medicare overpayments when:

1. A Medicaid provider has a Medicare provider agreement in effect but continues to participate in the Medicare program at such a minimal level as to prevent recovery of the overpayment;
2. A Medicaid provider no longer has a Medicare provider agreement in effect; or
3. A Medicaid provider has previously accepted assignment under Medicare, but has submitted no claims or has submitted claims totalling less than the overpayment amount.

Under section 1914(b) of the act, HCFA may recover Medicare overpayments by reducing Federal financial participation (FFP) in payments otherwise due a State under title XIX, and may require (order) the State to reduce its payment to the provider.

According to (the intermediary/carrier), the following provider has received the Medicare overpayment listed below:

<u>PROVIDER NAME</u>	<u>AMOUNT OF OVERPAYMENT</u>	<u>DATE OF OVERPAYMENT</u>
<u>(include)</u> _____	_____	_____
<u>(address)</u> _____		
_____		
_____		

Efforts by (the intermediary/carrier) to collect the amount from this provider have been unsuccessful. Therefore, 60 days from the date you receive this letter, you must begin withholding the Federal share of any payments you make to this provider. The amount withheld will be the lesser of (a) the Federal share of payments to the overpaid provider or (b) the total Medicare overpayment.

Exhibit 2

Report all payments withheld on line 4 of your next Form HCFA-64 and attach a supporting schedule. (See Exhibit 3.)

If you do not comply with this order and make full payment to the provider, your claim for FFP will be disallowed and your grant award adjusted in order to effect recoupment.

If you have any questions, please contact the Associate Regional Administrator for Financial Operations at \_\_\_\_\_.

Sincerely,

Regional Administrator

Enclosure

cc:

Provider (send by certified mail)  
Division of State Agency Financial Management  
Division of Provider Overpayment  
Intermediary/carrier  
Regional Medicare file  
Regional Medicaid file

Letter Terminating the Medicare Overpayment Collection

(Medicaid State agency)

RE: (Overpayment ID No.)

Dear \_\_\_\_\_:

We have determined that no further action should be taken on the recovery of the subject Medicare overpayment to (provider) for \$\_\_\_\_\_. This action is being terminated for the following reason(s):

- \_\_\_\_\_ The overpayment has been recovered.
- \_\_\_\_\_ The provider has made an agreement, satisfactory to HCFA, to repay the overpayment.
- \_\_\_\_\_ HCFA has determined that there is no overpayment based on newly acquired evidence or a subsequent audit.

If you have any questions, please contact the Associate Regional Administrator for Financial Operations at \_\_\_\_\_.

Sincerely,

Regional Administrator

cc:  
Provider (send by certified mail)  
Division of State Agency Financial Management  
Division of Provider Overpayment  
Intermediary/carrier  
Regional Medicare file  
Regional Medicaid file

SUGGESTED FORMAT

FORM HCFA-64 SUPPORTING SCHEDULE FOR OVERPAYMENT COLLECTIONS  
REPORTED ON LINE 4 PURSUANT TO SECTION 1914 OF THE SOCIAL SECURITY ACT  
AND 42 CFR 447.30

STATE: \_\_\_\_\_ QUARTER ENDED: \_\_\_\_\_

OVERPAYMENT IDENTIFICATION NUMBER: \_\_\_\_\_

PROVIDER NAME AND ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ The following overpayment collection has been made:

1. AMOUNT COLLECTED THIS QUARTER: \_\_\_\_\_

2. TOTAL OVERPAYMENT AMOUNT: \_\_\_\_\_

3. AMOUNT COLLECTED TO DATE: \_\_\_\_\_  
(Includes amount on Line 1)

4. TOTAL AMOUNT OUTSTANDING: \_\_\_\_\_  
(Line 2 minus line 3)

\_\_\_\_\_ No overpayment collection can be made at this time because:

\_\_\_\_\_ The provider did not submit a claim for this quarter.

\_\_\_\_\_ The provider has withdrawn from the Medicaid program.

\_\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_

SUGGESTED FORMAT



### Recovering Medicare Overpayments

The following example illustrates how withholding works:

1. Assume Medicare is owed \$300 by Provider A.
2. Provider A does not remit the amount to the intermediary/carrier, so the intermediary/carrier requests assistance in collecting the overpayment under Section 1914 of the Social Security Act.
3. The HCFA RO orders the Medicaid State agency to withhold payment to the provider equal to the Medicare overpayment amount (\$300).
4. The Medicaid State agency receives a \$1,000 bill for services rendered by the Medicaid provider.
5. Payment to the provider is determined as follows (assume a State FMAP rate of 50 percent):

State share	\$500
Federal share	\$200
(\$500 less the Medicare overpayment amount of \$300)	_____
Total payment to the provider	\$700

6. Form HCFA-64 Reporting:

On line 4 enter	\$ 300
On line 6 enter	\$1,000 Total Computable
	\$ 500 Federal Share

7. Form HCFA-152 Computation of Grant Award:

The funding on the grant award is reduced by the amount reported on line 4.

8. Division of Accounting credits the Medicare Trust Fund with the amount reported on line 4. At this point, Provider A's obligation to Medicare is satisfied.
9. The overpayment attributable to Provider A is later reduced to \$100. Since the intermediary/carrier was credited the entire \$300 amount withheld from the Medicaid provider, the \$200 excess amount withheld will be remitted directly to the provider by the intermediary/carrier.

NOTE: If the State does not comply with HCFA's order and makes full payment to the provider, the Regional Administrator will disallow the portion of the funding for the claim equal to the overpayment, in this example \$300. The grant award will reflect the disallowance (i.e., the funds will not be paid). Any excess amount withheld will be restored to the State by the intermediary/carrier.

SUGGESTED FORMAT

Letter Informing Provider of Intent to Refer Collection of Overpayment to HCFA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(Provider)  
Name and Address

Dear \_\_\_\_\_:

Section 1885 of the Social Security Act authorizes the Health Care Financing Administration (HCFA) to withhold Medicare payments to providers to recover Medicaid overpayments made to any provider participating in both programs. Withholding may occur when the provider has, or previously had, in effect an agreement with a Medicaid State agency to furnish Medicaid services, and the Medicaid agency has been unable to recover overpayments made to the provider or to collect the information necessary to enable it to determine the amount of overpayments made to that provider.

We have determined that you received excess reimbursement in the amount of \$(\_\_\_\_\_) for \_\_\_\_\_ (specify the care and services rendered for which the provider was overpaid) \_\_\_\_\_. The basis for this determination was \_\_\_\_\_ (briefly describe how the overpayment was revealed). Earlier correspondence on this matter was sent to you on \_\_\_\_ (date) \_\_\_\_.

Since we have been unable to collect the \$\_\_\_\_\_, we will ask the HCFA regional office to contact the Medicare intermediary if this matter is not resolved in 30 days from the date you receive this letter. The intermediary will offset payment to you until this overpayment is recovered.

If you have any questions or need information on this matter, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Director  
Medicaid State agency

cc:  
Regional Administrator  
Division of State Agency Financial Management  
Division of Provider Overpayment  
Intermediary/carrier

SUGGESTED FORMAT

SUGGESTED FORMAT

State Letter Requesting Assistance in Collecting Medicaid Overpayments

(Regional Administrator)

Dear \_\_\_\_\_:

On \_\_\_ (date) \_\_\_ we sent the enclosed letter to \_\_\_ (provider) \_\_\_ requesting resolution of a Medicaid overpayment in the amount of \$\_\_\_\_\_. The Federal share of this overpayment amount, \$\_\_\_\_\_, has already been reported on our Form HCFA-64 for the quarter ending \_\_\_\_\_.

Since we have not received a satisfactory response from the provider, we are requesting the HCFA regional office to submit the overpayment to the appropriate intermediary/carrier for collection under Section 1885 of the Social Security Act.

The enclosed documentation is being submitted in accordance with the Medicaid regulations at 42 CFR 447.31(c)(1) through (7).

If you have any questions or need additional information on this matter, please contact \_\_\_\_\_ to \_\_\_\_\_.

Sincerely,

Director  
Medicaid State agency

Enclosures

cc:  
Provider  
Division of State Agency Financial Management  
Division of Provider Overpayment  
Intermediary/carrier

SUGGESTED FORMAT

Letter Transmitting Payment Check to State

(Medicaid State agency)

Dear \_\_\_\_\_:

Re: (Overpayment ID No.)

This is in reference to your agency's letter of \_\_\_\_ (date) \_\_\_\_ requesting this office to submit the overpayment discussed below to the Medicare intermediary/carrier for collection under Section 1885 of the Social Security Act.

The (intermediary/carrier) has recently recovered \$ \_\_\_\_\_.

The current status of the overpayment is as follows:

1. Amount of this collection \_\_\_\_\_
2. Original overpayment amount  
identified for collection \_\_\_\_\_
3. Amount collected to date  
(Includes amount on line 1) \_\_\_\_\_
4. Balance (line 2 minus line 3) \_\_\_\_\_

If you have any questions, please contact the Associate Regional Administrator for Financial Operations at \_\_\_\_\_.

Sincerely,

Regional Administrator

Enclosure

cc:  
Division of State Agency Financial Management  
Division of Provider Overpayment  
Intermediary/carrier  
Regional Medicare file  
Regional Medicaid file  
Provider

SUGGESTED FORMAT

Letter Terminating the Medicaid Overpayment Collection

Regional Administrator

Dear \_\_\_\_\_: Re: (Overpayment ID No.)

We have determined that no further action should be taken on the recovery of the subject Medicaid overpayment to (provider) for \$\_\_\_\_\_. This action should be terminated for the following reason:

- \_\_\_\_\_The provider has made a satisfactory agreement to repay the overpayment.
- \_\_\_\_\_The Medicaid overpayment has been recovered.
- \_\_\_\_\_We have determined that there is no overpayment, based on newly acquired evidence or a subsequent audit.

If you have any questions or need information on this matter, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Director  
Medicaid State agency

cc:  
Provider  
Division of State Agency Financial Management  
Division of Provider Overpayment  
Regional Medicare file  
Regional Medicaid file

SUGGESTED FORMAT

Recovering Medicaid Overpayments

The following example illustrates how withholding works:

1. Assume the State is owed \$300 by Provider B and that the Medicaid State agency has previously reported the Federal share of the overpayment on its Form HCFA-64.
2. Provider B does not remit the amount to the Medicaid State agency, so the State requests assistance in collecting the overpayment under Section 1885 of the Social Security Act.
3. The HCFA RO contacts the appropriate intermediary/carrier.
4. The intermediary/carrier receives a \$1,000 bill for services rendered by the Medicare provider.
5. Payment to the provider is reduced by the amount of the Medicaid overpayment.

$$\$1,000 - 300 = \$700$$

6. The intermediary/carrier sends a check for \$300 to the RO payable to the Medicaid State agency.
7. The State receives the check from the RO.
8. Provider B's obligation to Medicaid is satisfied.
9. The overpayment attributable to Provider B is later reduced to \$100. Since the Medicaid State agency received the entire \$300 amount withheld from the Medicare provider, the \$200 excess amount withheld will be remitted directly to the provider by the State.

## 2853. PROCEDURES FOR REFUNDING THE FEDERAL SHARE OF MEDICAID OVERPAYMENTS

2853.1 Overpayment Definitions and Exclusions.--An "overpayment" is an amount which is paid by a State Medicaid agency to a provider in excess of the amount that is proper and which is required to be refunded to HCFA. An excess payment to an institutional provider which you recover through an adjustment to the per diem rate for a subsequent period is not an overpayment. However, if you seek to recover such an amount in a lump sum, by an installment repayment plan, or by withholding a portion of future payments to the provider, that amount is deemed an overpayment.

These provisions do not apply in situations involving third party liability, which pertains to efforts to recover a payment that is otherwise allowable but made by the wrong payer.

2853.2 Discovery.--"Discovery" signifies the date upon which the 60/calendar-day period for recovering and refunding an overpayment commences. Discovery occurs either (1) on the date any Medicaid agency or other State official first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery, or (2) on the date a provider acknowledges an overpayment to the State in writing, whichever date is earlier. While these alternative dates establish the point of discovery for overpayments resulting from abuse, "discovery" of an overpayment that results from fraud occurs on the date of your final notice to the provider specifying an overpayment amount to be recovered.

Where Federal review reveals that you have failed to identify an overpayment or have identified an overpayment amount but failed to send notice according to your standard policies and procedures, discovery will be deemed to have occurred on the date the Federal reviewer first notifies you in writing of the overpayment and specifies a dollar amount subject to the recovery. Under this definition of discovery, as well, you have 60 calendar days in which to seek recovery before the Federal share is due.

2853.3 Adjustment to the Federal Payment.--Credit HCFA with the Federal share of the overpayment on the Medicaid expenditure report (Form HCFA-64) for the quarter no later than that in which the 60-day period following discovery ends. It is irrelevant whether you are unable to recover the overpayment within the 60-day period. However, if for any valid reason, the overpayment originally credited the Federal Government is later reduced, you can make the appropriate adjustment on the Form HCFA-64.

2853.4 Hold-Harmless Provisions.--Section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985 provides that you are not liable for the Federal share of overpayments which constitute debts discharged in bankruptcy or which are otherwise uncollectible. If a provider declares bankruptcy, the overpayment is considered uncollectible as of the date the bankruptcy petition is filed in court, if you are on record with the court as a creditor of the petitioner in the amount of the Medicaid overpayment. The term "otherwise being uncollectible" is strictly defined as "out-of-business," or no longer in operation. In asserting that a provider is out-of-business, document your efforts to locate the party and its assets by furnishing an affidavit or certification from your appropriate legal authority establishing that the provider is out-of-business and the effective date of that decision under State law.

If the 60-day limit expires before the bankruptcy petition is filed or you find the provider to be "out-of-business," you must credit HCFA with its Federal share, regardless of your recovery. If the provider later files for bankruptcy, or goes "out-of-business" and the overpayment is uncollectible under State law and administrative procedures, you may reclaim the amount credited to HCFA. These amounts may be reclaimed only if, until the date of bankruptcy or closing of the business, you vigorously pursue recovery according to State law, though without complete success. Naturally, you must credit HCFA with the Federal share of whatever amounts you recover under a court-approved discharge of bankruptcy.

2853.5. Implementation Dates. Overpayments which occurred before the October 1, 1985 effective date of the statute must be reflected immediately on the next Form HCFA-64 submission, if they have not been already credited to HCFA.

Overpayments made on or after October 1, 1985 must be credited to HCFA on the Form HCFA-64 for the quarter no later than that in which the 60-day period following discovery ends. Any such overpayments for which the 60-day recovery period already has ended are due on the next Form HCFA-64 submitted after publication of this instruction.